

OPEN MEETING



0000114483

ORIGINAL

MEMORANDUM

Arizona Corporation Commission

DOCKETED

RECEIVED

2010 JUL 15 P 12:43

TO: THE COMMISSION

JUL 15 2010

FROM: Utilities Division

DOCKETED BY

mm

DOCKET CONTROL

DATE: July 14, 2010

RE: IN THE MATTER OF THE APPLICATION OF CCG COMMUNICATIONS, LLC
FOR APPROVAL TO PLEDGE OR ENCUMBER ASSETS (DOCKET NO.
T-04290A-10-0216)

Introduction

On May 26, 2010, CCG Communications, LLC ("CCG" or "Applicant") filed an application with the Arizona Corporation Commission ("Commission") requesting approval pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 as well as any other applicable statutes or rules, to pledge and encumber its assets located in Arizona, in connection with a pending transaction between its parent, Veroxity Holdings, Inc. ("Veroxity") and the shareholders of Veroxity and Light Tower Holdings, LLC ("Light Tower").

Upon completion of the pending transaction, Light Tower will acquire all of the issued and outstanding shares of Veroxity and the Veroxity shareholders will become minority interest holders in Light Tower. At closing, the Veroxity shares will be transferred to Light Tower's wholly-owned indirect subsidiary, Light Tower LLC (a wholly owned subsidiary of LT LLC, which is a direct subsidiary of Light Tower), and Veroxity and CCG will become indirect subsidiaries of LT LLC. As a result, Veroxity and its subsidiaries, including CCG, will join and become credit parties to an existing Credit Agreement, dated October 20, 2008, as amended, between LT LLC, as Borrower, and the Lenders. CCG will provide a guaranty and will pledge its assets as security for the financing arrangements under the Credit Agreement. CCG, as a public service corporation holding a Certificate of Convenience and Necessity ("CC&N") authorizing it to provide competitive services in Arizona, seeks authority from the Commission pursuant to A.R.S. § 40-285, to the extent required, to encumber its assets under the Credit Agreement subsequent to closing of the pending transaction.

Background

Veroxity Holdings, Inc. and CCG Communications, LLC

Veroxity Holdings, Inc., a Delaware corporation, is a privately held company with its executive headquarters located at 6 Technology Park Drive, Westford, Massachusetts 01886. CCG Communications, LLC, a Massachusetts limited liability company, is a direct wholly owned subsidiary of Veroxity with its executive headquarters located at 6 Technology Park Drive, Westford, Massachusetts 01886. CCG was authorized to provide competitive facilities-

based local exchange telecommunications services in Arizona in Decision No. 67883, dated June 1, 2005.

Light Tower Holdings, LLC and LT LLC

Light Tower Holdings, LLC, a Delaware limited liability company, is a privately held company with its executive headquarters located at 80 Central Street, Boxborough, Massachusetts. Through its operating subsidiaries, Light Tower offers transport services, internet access, and collocation services. The company has over 4,500 fiber route miles with over 1,750 on-net buildings coupled with comprehensive transport and alternative access solutions. The company's geographic footprint extends from Boston and southern New Hampshire, to eastern New York State, northern New Jersey, Long Island, New York City, Rhode Island and Connecticut. Light Tower's subsidiaries, including LT LLC and Light Tower LLC, do not operate in the State of Arizona.

The Applicant's Transaction

Upon consummation of the pending transaction between Verosity and the shareholders of Verosity and Light Tower Holdings, LLC, Verosity and CCG, as new subsidiaries of LT LLC, will be required to participate in the existing Credit Agreement. Under the Credit Agreement, CCG will provide a guaranty and will pledge its assets as security for the financing arrangements under that agreement. The Credit Agreement, as amended, provides for various credit facilities in an aggregate amount of up to \$64 Million, including a revolving credit facility and term loans.

Staff's Analysis

The pending transaction will result in the indirect transfer of control of CCG to Light Tower. Staff reviewed CCG's 2009 Annual Report to confirm that it is not classified as a Class A utility that would be subject to the Public Utility Holding Companies And Affiliated Interests Rules (A.A.C. R12-2-801 to R12-2-806) that require utilities with greater than \$1 million in jurisdictional revenues to obtain prior approval for a transfer of control transaction.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

A pledge of the Applicants' Arizona's assets should not impair the availability of service to customers since the Applicants provide competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Therefore, any authorization for encumbrance should provide customer protection for prepayments and deposits.

On June 9, 2010, CCG provided Staff with an advance copy of its public notice of financing application. The Company published notice of its financing application in The Arizona Republic on June 11, 2010. The Affidavit of Publication was filed with the Commission's Docket Control on June 21, 2010.

The Applicants were found to be in Good Standing and in Compliance by the Customer Service and Compliance Sections of the Commission.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize CCG's request to encumber its Arizona assets as described in its application.

Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicant.

Staff further recommends that CCG file with Docket Control, as a compliance item in this matter, copies of the loan documents within 60 days of the execution of any financing transaction authorized herein.



Steven M. Olea
Director
Utilities Division

SMO:AFF:lhms\MAS

ORIGINATOR: Armando F. Fimbres

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 KRISTIN K. MAYES

Chairman

3 GARY PIERCE

Commissioner

4 PAUL NEWMAN

Commissioner

5 SANDRA D. KENNEDY

Commissioner

6 BOB STUMP

Commissioner

7
8 IN THE MATTER OF THE APPLICATION
9 OF CCG COMMUNICATIONS, LLC FOR
10 APPROVAL TO PLEDGE OR ENCUMBER
11 ASSETS
12

DOCKET NO. T-04290A-10-0216

DECISION NO. _____

ORDER

13 Open Meeting
14 July 27 and 28, 2010
15 Phoenix, Arizona

16 BY THE COMMISSION:

17 FINDINGS OF FACT

18 1. On May 26, 2010, CCG Communications, LLC ("CCG" or "Applicant"), filed an
19 application with the Arizona Corporation Commission ("Commission") requesting approval
20 pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 as well as any other applicable statutes or
21 rules, to pledge and encumber its assets located in Arizona, in connection with a pending
22 transaction between its parent, Veroxity Holdings, Inc. ("Veroxity") and the shareholders of
23 Veroxity and Light Tower Holdings, LLC ("Light Tower").

24 2. Upon completion of the pending transaction, Light Tower will acquire all of the
25 issued and outstanding shares of Veroxity and the Veroxity shareholders will become minority
26 interest holders in Light Tower. At closing, the Veroxity shares will be transferred to Light
27 Tower's wholly-owned indirect subsidiary, Light Tower, LLC (a wholly owned subsidiary of LT
28 LLC, which is a direct subsidiary of Light Tower), and Veroxity and CCG will become indirect
subsidiaries of LT LLC. As a result, Veroxity and its subsidiaries, including CCG, will join and

1 become credit parties to an existing Credit Agreement, dated October 20, 2008, as amended,
2 between LT LLC, as Borrower, and the Lenders. CCG will provide a guaranty and will pledge its
3 assets as security for the financing arrangements under the Credit Agreement. CCG, as a public
4 service corporation holding a Certificate of Convenience and Necessity ("CC&N") authorizing it
5 to provide competitive services in Arizona, seeks authority from the Commission pursuant to
6 A.R.S. § 40-285, to the extent required, to encumber its assets under the Credit Agreement
7 subsequent to closing of the pending transaction.

8 Background of Applicants

9 3. Veroxity Holdings, Inc., a Delaware corporation, is a privately held company with
10 its executive headquarters located at 6 Technology Park Drive, Westford, MA 01886. CCG
11 Communications, LLC, a Massachusetts limited liability company, is a direct wholly owned
12 subsidiary of Veroxity with its executive headquarters located at 6 Technology Park Drive,
13 Westford, Massachusetts 01886. CCG was authorized to provide competitive facilities-based local
14 exchange telecommunications services in Arizona in Decision No. 67883, dated June 1, 2005.

15 4. Light Tower Holdings, LLC, a Delaware limited liability company, is a privately
16 held company with its executive headquarters located at 80 Central Street, Boxborough,
17 Massachusetts. Through its operating subsidiaries, Light Tower offers transport services, internet
18 access, and collocation services. The company has over 4,500 fiber route miles with over 1,750
19 on-net buildings coupled with comprehensive transport and alternative access solutions. The
20 company's geographic footprint extends from Boston and southern New Hampshire, to eastern
21 New York State, northern New Jersey, Long Island, New York City, Rhode Island and
22 Connecticut. Light Tower's subsidiaries, including LT LLC and Light Tower LLC, do not operate
23 in the State of Arizona.

24 The Applicant's Transaction

25 5. Upon consummation of the pending transaction between Veroxity and the
26 shareholders of Veroxity and Light Tower Holdings, LLC, Veroxity and CCG, as new subsidiaries
27 of LT LLC, will be required to participate in the existing Credit Agreement. Under the Credit
28 Agreement, CCG will provide a guaranty and will pledge its assets as security for the financing

1 arrangements under that agreement. The Credit Agreement, as amended, provides for various
2 credit facilities in an aggregate amount of up to \$64 Million, including a revolving credit facility
3 and term loans.

4 Staff's Analysis & Recommendations

5 6. The pending transaction will result in the indirect transfer of control of CCG to
6 Light Tower. Staff reviewed CCG's 2009 Annual Report to confirm that it is not classified as a
7 Class A utility that would be subject to the Public Utility Holding Companies And Affiliated
8 Interests Rules (A.A.C. R12-2-801 to R12-2-806) that require utilities with greater than \$1 million
9 in jurisdictional revenues to obtain prior approval for a transfer of control transaction.

10 7. A.R.S. § 40-285 requires public service corporations to obtain Commission
11 authorization to encumber certain utility assets. The statute serves to protect captive customers
12 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
13 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
14 service.

15 8. A pledge of the Applicants' Arizona's assets should not impair the availability of
16 service to customers since the Applicants provide competitive services that are available from
17 alternative service providers. Customers may still have exposure to losses to the extent they have
18 prepaid for service or made deposits, therefore, any authorization for encumbrance should provide
19 customer protection for prepayments and deposits.

20 9. On June 9, 2010, CCG provided Staff with an advance copy of its public notice of
21 financing application. The Company published notice of its financing application in The Arizona
22 Republic on June 11, 2010. The Affidavit of Publication was filed with the Commission's Docket
23 Control on June 21, 2010.

24 10. The Applicants were found to be in Good Standing and in Compliance by the
25 Customer Service and Compliance Sections of the Commission

26 11. Based on its analysis of the proposed transaction, Staff concludes that the
27 transaction would not impair the financial status of the Company, would not impair its ability to
28 attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and

adequate service. Staff, therefore, recommends that the Commission authorize CCG's request to encumber its Arizona assets as described in its application.

12. Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

13. Staff further recommends that CCG file with Docket Control, as a compliance item in this matter, copies of the loan documents, within 60 days of the execution of any financing transaction authorized herein.

CONCLUSIONS OF LAW

1. CCG Communications, LLC is a public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over CCG Communications, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated July 14, 2010, concludes that it is in the public interest to approve CCG Communications, LLC's application to pledge and encumber its assets located in Arizona.

ORDER

IT IS THEREFORE ORDERED that the application of CCG Communications, LLC requesting approval to encumber assets be and hereby is approved as discussed herein.

IT IS FURTHER ORDERED that CCG Communications, LLC is authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the application of CCG Communications, LLC is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by CCG Communications, LLC.

...

1 IT IS FURTHER ORDERED that copies of executed security documents be filed with
2 Docket Control, as a compliance item, within 60 days of the decision in this matter.

3 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

4
5 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

6
7 _____
CHAIRMAN

COMMISSIONER

8
9
10 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto, set my hand and caused the official seal of
this Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2010.

15
16
17 _____
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

18
19 DISSENT: _____

20
21 DISSENT: _____

22 SMO:AFF:lh\MAS
23
24
25
26
27
28

1 SERVICE LIST FOR: CCG Communications, LLC
2 DOCKET NO. TT-04290A-10-0216

3 Mr. Thomas H. Campbell
4 Mr. Michael T. Hallam
5 Lewis & Roca LLP
6 40 North Central Avenue
7 Phoenix, Arizona 85004

8 Mr. Martin L. Stern
9 Mr. Peter W. Denton
10 K&L Gates LLP
11 1601 K Street, N.W.
12 Washington, DC 20006

13 Mr. Christopher E. Dalton
14 General Counsel
15 Verosity Holdings, Inc.
16 6 Technology Park Drive
17 Westford, Massachusetts 01886

18 Ms. Catherine Wang
19 Mr. Brett P. Ferencak
20 Bingham McCutchen LLP
21 2020 K Street, N.W.
22 Washington, DC 20006

23 Ms. Leslie Brown
24 General Counsel
25 Lighttower Fiber Networks
26 80 Central Street
27 Boxborough, Massachusetts 01719

28 Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007